

January 25, 2010

## Climate Change Policy Update Week of January 18-22, 2010

**Commentary:** *Senator Lisa Murkowski (R-AK) – joined by Sen. Lindsey Graham (R-SC), and three moderate Democrats – introduced a joint resolution of Congressional disapproval of EPA’s “endangerment finding,” which would dislodge the keystone of EPA’s authority to regulate greenhouse gas (GHG) emissions. In a floor statement, Sen. Murkowski said EPA regulation would be the “worst option,” and that “with so much at stake, Congress must be given time to develop an appropriate and more responsible solution.” To pass, the joint resolution needs 51 votes in the Senate and support of the House, but would likely be vetoed by the President. Even if it faces relatively tall odds, the resolution could force difficult, arguably “pro-regulation” votes by Democrats still jarred by the outcome in the Massachusetts election. These circumstances could encourage a search for compromises that could delay EPA regulation of stationary sources, e.g., by fixing a different date under which GHG emissions become “subject to regulation” as a result of the Agency’s promulgation of emission standards for new motor vehicles.*

### Executive Branch

- **SEC Announces Open Meeting on Disclosure of Climate Risks.** The Securities and Exchange Commission (SEC) announced it would hold an open meeting on January 27, 2010 at the agency’s headquarters in Washington, D.C. to consider whether to provide guidance to public companies on the disclosure of material risks related to climate change. This action responds to a petition filed last November by institutional investors and environmental organizations, requesting that the SEC require disclosure of physical risks to company assets as a result of climate change; financial risks of compliance with emerging GHG regulations; and reputational risks of failing to take action to mitigate GHG emissions. The meeting notice is available at <http://www.sec.gov/news/openmeetings/2010/ssamtg012710.htm>.
- **NIST Issues Major Round of Long-Awaited “Smart Grid” Interoperability Standards.** Responding to a mandate in the Energy Independence and Security Act of 2007, the National Institute of Standards and Technology (NIST) finalized a list of 75 guidelines or standards for the design and operation of “smart grid” systems, widely viewed as a key tool for improving the efficiency and GHG performance of the electric sector. The approval of the first list of standards (most of which were developed by industry through existing, consensus-based, standards setting organizations), was initially published in September. The standards address eight priority subject areas, including demand response and consumer energy efficiency; wide-area situational awareness; energy storage; electric transportation; advanced metering infrastructure; distribution grid

### About Van Ness Feldman

With 80 professionals in Washington, DC and Seattle, WA, Van Ness Feldman focuses on law and policy relating to:

- Electricity & Energy Efficiency
- Environment
- Climate Change & Emissions Trading
- Renewable Energy, Cleantech, & Biofuels
- Coal & CCS
- Natural Gas
- Nuclear Energy
- Hydropower
- Infrastructure Development
- Indian Law
- Oil & Products Pipelines
- Public Lands & Natural Resources
- Transportation

Learn more at [www.vnf.com](http://www.vnf.com).

January 25, 2010

management; cyber security; and network communications. A report accompanying the list also identified 70 additional standards that NIST must approve, amend or develop through a further consensus process and announced a timetable for approving or completing 15 of those standards in 2010. The additional standards include energy storage interconnection guidelines, smart meter communications standards, and interoperability standards for plug-in electric vehicles. In order to take legal effect in interstate transmission and wholesale electricity markets, the NIST-reported standards must be approved by the Federal Energy Regulatory Commission (FERC). The report is available at [http://www.nist.gov/public\\_affairs/releases/smartgrid\\_interoperability\\_final.pdf](http://www.nist.gov/public_affairs/releases/smartgrid_interoperability_final.pdf).

## Congress

- **Sen. Murkowski Seeks Disapproval of EPA's Endangerment Finding.** Senator Lisa Murkowski (R-AK) introduced a joint resolution of disapproval of EPA's finding that GHG emissions endanger public health and welfare, a finding which triggers obligations for EPA to follow through on regulation of GHG emissions under the Clean Air Act. Thirty-five Republicans (including Sen. Lindsey Graham (SC)) and three Democrats (Sens. Blanche Lincoln (AR), Mary Landrieu (LA), and Ben Nelson (NE)) co-sponsored the resolution. Joint resolutions of disapproval that are passed by both houses of Congress and signed by the President prevent an agency rule from taking effect unless Congress subsequently passes legislation authorizing the rule to be re-promulgated. Joint resolutions are subject to expedited consideration, and are not subject to filibuster in the Senate.
- **Brown Elected in Massachusetts; Senate Efforts Continue.** Republican Scott Brown won the special election to fill former Senator Ed Kennedy's seat. Although he voted in support of Massachusetts' involvement in the Regional Greenhouse Gas Initiative, Brown has stated that he would oppose a cap-and-trade bill in the Senate. Although Brown's election makes the effort to pass cap-and-trade legislation more difficult, White House Council on Environmental Quality Deputy Director Gary Guzy said that the Administration remains committed to comprehensive energy and climate legislation that includes a cap-and-trade program. Senators Graham, John Kerry (D-MA), and Joe Lieberman (I-CT), leaders of the effort to create a bipartisan climate package in the Senate, met with White House Chief of Staff Rahm Emanuel to discuss strategy. Sen. Kerry said that they are "already working on text" and would have an update in a few days. Sen. Graham, however, told reporters that the trio does not have anything down on paper, and also that the Senate bill will probably be a "hybrid" between a cap-and-trade system and the cap-and-dividend approach found in legislation introduced by Senators Maria Cantwell (D-WA) and Susan Collins (R-ME).

## States and Cities

- **State Officials Urge Congress to Refrain From Interfering with EPA GHG Regulations.** A coalition of state environmental agency heads calling themselves the "State Voice" Group sent a letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) declaring their opposition to any Congressional action that would prevent EPA from implementing its GHG endangerment finding or from otherwise using the Clean Air Act to regulate GHG emissions. The bipartisan group of 12 state officials represents California, Connecticut, Illinois, Maine, Massachusetts, Michigan, New Jersey, New Mexico, New York, Oregon, Washington, and Wisconsin.

January 25, 2010

## Industry and NGOs

- **Landowners, Conservationists Advocate for Larger Allowance Allocation.** Arguing that the Kerry-Boxer climate change bill reserves too few allowances to stimulate biological carbon sequestration on forested lands, the Pacific Forest Trust and fourteen other organizations launched a series of meetings with key Senators to push for an allocation of five percent of the allowances in a cap-and-trade program. The groups planned meetings with Sen. Blanche Lincoln (D-AR), who would have jurisdiction over financing for forestry activities as chair of the Senate Agriculture Committee, as well as Sens. Max Baucus (D-MT) and Lindsey Graham.
- **Agriculture Lobby Issues Letter of Support for Murkowski Resolution.** A total of one hundred and forty-four agriculture associations, including the American Farm Bureau Federation, signed one of four separate letters of support for Sen. Lisa Murkowski's (R-AK) efforts to block impending EPA regulation of GHGs under the Clean Air Act. One of the letters, which was signed by 138 organizations, claimed that EPA regulation of GHGs "will carry severe consequences for the U.S. economy, including America's farmers and ranchers, through increased input costs and international market disparities." The American Farm Bureau Federation's letter argued that "how carbon emissions should be regulated is a matter to be decided by elected officials," and that curbing EPA authority would give Congress time to debate a new legislative framework for climate change.
- **WRI and WBCSD Field-Testing Tools for Quantifying Supply Chain Emissions.** The World Resources Institute (WRI) announced last week that two GHG quantification standards it has developed in conjunction with the World Business Council on Sustainable Development are now being field-tested by sixty corporations from the U.S. and sixteen other countries. The standards, known as the Product Life Cycle Accounting and Reporting Standard and the Scope 3 Accounting and Reporting Standard, are designed to measure the full GHG emissions attributable to consumer products by tracing GHGs emitted at every step of production, including the extraction of raw materials. WRI and WBCSD, which pioneered the Greenhouse Gas Protocol for corporate accounting and reporting of GHG emissions, expect to finalize the standards in December of this year. Companies participating in testing the standards include Airbus, 3M Co., and Levi Strauss & Co.

## Studies and Reports

- **Study Finds High Wind Penetration in East Feasible.** A study examining the impact of 20 to 30 percent penetration of wind energy by 2024 on the Eastern Interconnection concluded that high penetration of wind is technically feasible with significant expansion of the transmission infrastructure. The study also found that new transmission would be required even for the reference scenario of wind expansion, and that the costs of integrating a large amount of wind generation were manageable (less than \$0.002 per kilowatt-hour of electricity) with large regional operating pools and significant market, tariff, and operational adjustments. The study, which was prepared by EnerNex Corporation for the National Renewable Energy Laboratory, is available at [http://www.nrel.gov/wind/systemsintegration/pdfs/2010/ewits\\_executive\\_summary.pdf](http://www.nrel.gov/wind/systemsintegration/pdfs/2010/ewits_executive_summary.pdf).
- **Poll Finds Voter Support for Climate Bill Based on Energy Security.** A poll conducted by Republican pollster Frank Luntz found that respondents said they were more likely to support

January 25, 2010

climate change legislation in order to (in order of preference): (1) end dependence on foreign fuels, (2) reduce air and water pollution, (3) save the planet from destruction, and (4) create new energy jobs. Respondents also reported preferring positive messages about a future with abundant, clean, and affordable energy over messages about pollution. The Environmental Defense Fund released a press release making the case that the poll results offer a clear path forward for bipartisan passage of a climate change bill in the Senate. The poll results are available at [http://www.edf.org/documents/10738\\_Language-of-a-Clean-Energy-Economy.pdf?redirect=language](http://www.edf.org/documents/10738_Language-of-a-Clean-Energy-Economy.pdf?redirect=language).

**If you have questions about topics covered in this Update, please contact Kyle Danish, head of the Climate Change and Emissions Trading Practice, at [kwd@vnf.com](mailto:kwd@vnf.com).**

*The Climate Policy Update is intended as a general summary of major climate change-related policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.*

© 2010 Van Ness Feldman, P.C. All Rights Reserved.

**For more information**

With 80 professionals in Washington, DC and Seattle, WA, Van Ness Feldman is recognized as a leading law and policy firm in the areas of traditional and renewable energy regulation and project development, climate change regulation and greenhouse gas emissions trading, environmental and natural resources regulation, and infrastructure development. Van Ness Feldman's Climate Change practice has received top recognition by *Chambers USA* and *Chambers Global*.